

MOSER LAW FIRM, PC



Steven J. Moser

Tel: 631-824-0200

steven.moser@moserlawfirm.com

April 24, 2024

VIA ECF

Hon. Gary R. Brown, USDJ
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11717

Re: *Barahona et al v Paradise Tree Service & Landscape, Corp et al*,
Case No. 21-cv-05400 (GRB)(AYS)

Dear Judge Brown:

I represent the Plaintiffs in the above-referenced matter. Please accept this pre-motion letter to strike the answer of the defendant Paradise Tree Service & Landscape Corp.

On January 31, 2024, Glenn Ingoglia, former counsel to all defendants, filed a motion to withdraw from the representation of both Paradise Tree Service & Landscape Corp. ("Paradise") and William Nieto. DE 48. Magistrate Judge Dunst granted the motion on February 8, 2024. DE 53. The order relieving counsel directed William Nieto to obtain new counsel or indicate that he would appear *pro se* on or before March 15, 2024. DE 48. The order further notified Paradise that "it must have counsel; it cannot proceed *pro se*." DE 48 (citing *Chalos & Co., P.C. v. SRAM & MRAM Res. Berhad*, No. 23CV2523, 2023 WL 7325424, at *1 (E.D.N.Y. July 10, 2023)).

As of March 27, 2024, Paradise had not yet retained new counsel. On that date, Magistrate Judge Dunst granted Paradise a final extension to April 10, 2024, to obtain counsel, and directed that should Paradise not retain counsel, the undersigned should file a pre-motion letter by April 24, 2024. DE 55.

[A corporation] cannot defend itself except by counsel. *See Grace v. Bank Leumi Trust Co. of Y.* 443 F.3d SO, 192 (2d Cir. 2006) ("[I]t is settled law that a corporation may not appear in a lawsuit against it except through an attorney, and that, where a corporation repeatedly fails to appear by counsel, a default judgment may be entered against it pursuant to Rule 55 . . . (internal quotation and brackets omitted); *Eagle Assocs. v. Bunk of Montreal*, 926 F.2d 1305, 1308 (2d Cir. 1991) ("[W]e long have required corporations to appear through a special agent, the licensed attorney. ") (citations omitted). Because [the corporation] has failed to obtain counsel despite two Court orders to do so, plaintiff's motion to strike defendant's answer and for an entry of default is granted. *See Shapiro, Bernstein, & Co. V. Continental Record Co.*, 386 F.2d 426, 427 (2d Cir. 1967) (per curiam)

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(reversing district court's denial of plaintiff's motion for default judgment where defendant corporation's counsel withdrew after filing answer and defendant did not obtain counsel as ordered by the district court); *Arch ASSOCS. v. HuAmerica Int'l.*, No. 93 Civ. 2168, 1994 U.S. Dist. LEXIS 8706, 1994 WL 319257 (S.D.N.Y. June 29, 1994) (entering default judgment where defendant corporation failed to comply with court order to obtain counsel); *Faberware, Inc. v. Groben*, No. 89 Civ. 6240, 1991 U.S. Dist. LEXIS 583, 1991 WL 8506 (S.D.N.Y. Jan. 22, 1991) (granting plaintiff's motion for default judgment where defendant corporation's counsel withdrew after filing motion to dismiss and defendant then failed to comply with court order to obtain new counsel).

Bratta v. Tramp, No. 08-CV-4073 (JFB) (ETB), 2009 U.S. Dist. LEXIS 152174, at *4-5 (E.D.N.Y. Nov. 30, 2009)(Bianco, J.).

Here, on the eve of trial and after 2 ½ years of heated litigation, counsel for Paradise was relieved. Despite two Court orders (DE 48 & 55), Paradise has not retained counsel to defend this action. Therefore, the Plaintiffs respectfully request that (1) the answer of the Defendant Paradise Tree Service & Landscaping Corp. be stricken, (2) the Clerk of the Court be directed to enter a default against Paradise, and (3) the Plaintiffs be given leave to submit evidence by affidavit or otherwise with respect to the damages sought within two weeks of entry of default. *See Bratta*, at *5.

I hereby certify that on April 24, 2024 I served this pre-motion letter via first class mail upon the addressees listed below.

Respectfully submitted,

Steven J. Moser

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TO Paradise Tree Service & Landscape Corp.
193 Lafayette Street
Copiague, NY 11747

CC: William Nieto
193 Lafayette Street
Copiague, NY 11747